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Attorneys for Defendant

Samantha Marie Tainewasher

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
(Honorable Stanley A. Bastian)**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAMANTHA MARIE

TAINEWASHER,

Defendant.

NO. 1:21-CR-2029-SAB

MOTION *IN LIMINE* RE EXPERT
TESTIMONY

DATE: December 15, 2021

TIME: 2:30 P.M.

TO: CLERK OF THE COURT, Eastern District of Washington;
AND TO: MICHAEL J. ELLIS, Assistant United States Attorney; and
AND TO: TIMOTHY J. OHMS, Assistant United States Attorney.

MOTION *IN LIMINE* RE EXPERT TESTIMONY -
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1 COMES NOW SAMANTHA TAINEWASHER by her attorneys, Richard A.
2 Smith of *Smith Law Firm* and Douglas E. McKinley, Jr. of *Law Offices of Douglas*
3 *E. McKinley, Jr.*, and moves this Court *in limine* to exclude or limit portions of the
4 proposed expert testimony of Stacey L. Hail, MD, FACMT.

5 The Government filed its notice of expert testimony on August 31, 2021
6 [ECF 32]. The notice identifies the Government's intent to call Stacey L. Hail, MD,
7 FACMT, as a witness to testify as to the cause of S.R.'s death. In conjunction with
8 the Government's notice, a report was produced by Dr. Hail. The report of Dr. Hail
9 includes a section titled "Pertinent Case Details/Timeline". The report is filed
10 separately under seal as Exhibit A. It is this portion of the Government's notice to
11 which the defendant objects.

12 The "pertinent case details/timeline" is Dr. Hail's recitation of information
13 gleaned from law enforcement reports and unrelated to a physiological determination
14 of the cause of death. (*See* Exhibit A, Bates number 0000000282-284.)

15 An expert is not permitted to simply parrot testimonial out-of-court statements.
16 *U.S. v. Gomez*, 725 F.3d 1121 (9th Cir. 2013) quoting *United States v. Johnson*, 587
17 F.3d 625 (4th Cir. 2009). The Government's notice states, in essence that Dr. Hail is
18 expected to testify that S.R. would not have died on March 29, 2020, but for the
19 fentanyl found in his blood. [ECF 32 at 7.] Her recitation of "Pertinent Case Details/
20 Timeline" is testimony at hearsay unrelated to the cause of S.R.'s death and should be
21 excluded.

22 Federal Rule of Evidence 703 allows an expert to formulate an opinion based
23 on facts or data which are "reasonably relied upon by experts in the particular field
24 informing opinions or inferences upon the subject ...". Fed. R. Evid. 703. Rule 703
25 requires a court to ask two questions when evaluating otherwise admissible evidence.

1 The first question is “whether the facts are of a type reasonably relied on by experts
2 in the particular field”. *Bauman v. Centex Corp.*, 611 F.2d 1115, 1120 (5th Cir.
3 1980). The second question is whether the probative value of the underlying data
4 substantially outweighs its prejudicial affect. Fed. R. Evid. 703, 338 F.3d 1058 (9th
5 Cir. 2003).

6 The proposed timeline is unconnected to the cause of death S.R. It simply
7 parrots testimonial out-of-court statements and is more prejudicial than probative.
8

9 For all these reasons the testimony of Stacey L. Hail, MD, FACMT, should be
10 prohibited.

11 DATED this 18th day of November 2021.

12 Presented by:

13
14 /s/ Richard A. Smith

15 RICHARD A. SMITH, WSBA #15127
16 Smith Law Firm

17 /s/ Douglas E. McKinley, Jr.

18 DOUGLAS E. MCKINLEY, JR.
19 Law Offices of Douglas E. McKinley, Jr.
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on November 18, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. On August 12, 2021, I emailed a copy of the foregoing with Michael J. Ellis and Timothy J. Ohms.

/s/ Lugene Borba

Lugene Borba
Paralegal